

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

L.C.,

Plaintiff,

V.

WELDON MARC GILBERT,

Defendant.

Case No. C09-5586 BHS

ORDER GRANTING
DEFENDANT'S MOTION FOR
STAY OF PROCEEDINGS

This matter comes before the Court on Defendant Weldon Marc Gilbert's motion for an order staying this action until the concurrent criminal action in Pierce County Superior Court has concluded. In the alternative, Defendant requests that the Court stay any and all discovery as it relates to Mr. Gilbert until the concurrent criminal action has been concluded.

The Court, having reviewed the motion, response and record herein, is fully informed and grants the motion to stay this action.

I. INTRODUCTION AND BACKGROUND

Plaintiff L.C. has brought this civil suit against Defendant Gilbert asserting Gilbert sexually and physically assaulted Plaintiff on multiple occasions commencing in approximately 1999. On April 23, 2009, Gilbert pled guilty in federal court (*U.S. v. Gilbert*, Case No. CR07-5732BHS) to thirty-five counts, including thirty-one counts of Sexual Exploitation of a Minor in the Production of Child Pornography, a portion of which involved

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1 his activity with Plaintiff L.C. He also pled guilty to two counts of Transportation of a
2 Minor to Engage in Illegal Sexual Activity, and two counts of Obstruction of Justice
3 involving conduct with persons other than Plaintiff.

4 On November 20, 2009, Defendant Gilbert pled guilty in Pierce County Superior Court
5 to two counts of Child Molestation in the First Degree and nine counts of Sexual
6 Exploitation of a Minor. On January 12, 2010, Gilbert withdrew his guilty plea in Pierce
7 County Superior Court. On March 12, 2010, the state filed an amended information for six
8 counts of Rape of a Child, and seven counts of Child Molestation. None of these charges
9 involve conduct with Plaintiff. The state has also charged Gilbert with one count of
10 Possession of Depictions of Minor Engaged in Sexually Explicit Conduct. The state relies on
11 depictions not part of the federal prosecution to support its one count of Possession of
12 Depictions of a Minor in Sexually Explicit Conduct.

13 As part of the prosecution of Gilbert in federal court (Case No. CR07-5732BHS), the
14 government seized property that was used in commission of the crimes. Under the terms of
15 the plea agreement with the federal government, Gilbert agreed to forfeiture of that property.
16 The property will be sold and the proceeds made available for restitution claims as deemed
17 appropriate by the Court. A restitution hearing is scheduled for June 21, 2010.

18 Defendant requests that this civil proceeding be stayed in order to protect Defendant's
19 Fifth Amendment rights against self-incrimination and also to allow Defendant to focus on
20 his defense in the criminal case in Pierce County, currently set for trial on June 21, 2010.

21 **II. DISCUSSION**

22 The Constitution does not ordinarily require a stay of civil proceedings pending the
23 outcome of criminal proceedings. *Keating v. Office of Thrift Supervision*, 45 F.3d 322 (9th
24 Cir. 1995); *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989).

1 In the absence of substantial prejudice to the rights of the parties involved, simultaneous
2 parallel civil and criminal proceedings are unobjectionable. Keating, 45 F.3d at 324.
3 Nevertheless, a court may decide in its discretion to stay civil proceedings when the interests
4 of justice require such action. Id.

5 The decision whether to stay civil proceedings in the face of a parallel criminal
6 proceeding should be made in light of the particular circumstances and competing interests
7 involved in the case and the extent to which a defendant's Fifth Amendment rights are
8 implicated. *Keating*, 45 F.3d at 324; *Molinaro*, 889 F.2d at 902. Additional factors courts
9 consider include: (1) the interest of a plaintiff in proceeding expeditiously with litigation or
10 any particular aspect of it, and the potential prejudice to plaintiff of a delay; (2) the burden
11 which any particular aspect of the proceedings may impose on a defendant; (3) the
12 convenience of the court in the management of its cases, and the efficient use of judicial
13 resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of
14 the public in the pending civil and criminal litigation.

15 Defendant's motion to stay turns upon the extent to which his Fifth Amendment rights
16 are implicated in the civil action. When simultaneous civil and criminal proceedings involve
17 "the same or closely related facts," Fifth Amendment concerns may be sufficient to warrant
18 a stay. *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich. 2007). Some courts have
19 gone so far as to recognize the extent of the overlap as the "most important factor." *Id.*, at
20 1039. In this case, there is no dispute that both actions arise from the "same nucleus of
21 facts" pertaining to Defendant's sexual molestation of minors. This aspect of the analysis
22 favors Defendant.

23 Plaintiff, however, asserts that the criminal charges do not involve Plaintiff and thus
24 there is no overlap in issues and no Fifth Amendment implication. The Court finds this

1 argument unpersuasive. The state criminal prosecution involves the same occurrences that
2 gave rise to Plaintiff's civil action: sexual exploitation of a minor. There is an overlap of
3 issues and a danger of self-incrimination if Defendant is forced to disclose information,
4 documents, witness information and testimony in the civil action while the criminal
5 proceeding is pending.

6 Plaintiff will not be substantially prejudiced by a stay of proceedings. Staying the civil
7 proceedings until the criminal action is completed may actually expedite the Plaintiff's case
8 in the civil action, as there will likely be a more limited need for discovery after the criminal
9 action.

10 Plaintiff argues that a stay is unwarranted because it will be more difficult to recover
11 losses if the case is stayed. Plaintiff fails to set forth any evidence beyond mere speculation
12 and argument that a delay in the civil case will make it more likely that the Plaintiff will be
13 unable to collect on a judgment. Further, as part of the plea agreement in the federal criminal
14 action, Gilbert stipulated to the forfeiture of personal property, including real estate,
15 automobiles, a boat, a plane and a helicopter. The forfeited property will be sold by the U.S.
16 Marshal, and the proceeds placed into a victims' fund. Defendant Gilbert has agreed to the
17 forfeiture in order to provide a source of recovery for all claimants, including Plaintiff in this
18 case. The plaintiffs that have commenced civil actions against Gilbert in state court have
19 had their proceedings stayed pending the criminal prosecution. If a plaintiff proceeds
20 independently, the first plaintiff to obtain judgment against Defendant may deplete all
21 available resources, therefore leaving no recovery for plaintiffs that have had their actions
22 stayed, regardless of the extent of the damages. Therefore, this case should be stayed in
23 order to allow all plaintiffs to proceed concurrently with their claims against the victims'
24 fund.

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1 There would be no detrimental effect on the convenience or efficiency of this Court to
2 stay the proceeding until the conclusion of the criminal action. This case is in the early
3 stages of litigation, with a trial date of March 7, 2011. Staying the case makes efficient use
4 of judicial resources by insuring that common issues of fact will be resolved and subsequent
5 civil discovery will proceed unobstructed by concerns regarding self-incrimination.

6 Further, the public interest is served by a stay in this matter. The public's interest in the
7 integrity of the criminal case is entitled to precedence over the civil litigant. Javier H. v.
8 Garcia-Botello, 218 F.R.D. 72, 75 (W.D. N.Y. 2003). With respect to non-parties to this
9 action, the plaintiffs, or potential plaintiffs, in the state court civil actions against Gilbert will
10 not be burdened by the grant of a stay in this action. In fact, a stay places the federal
11 Plaintiff and state court plaintiffs on a more equal footing.

12 **III. CONCLUSION**

13 For the above stated reasons, Defendant is entitled to a stay of this action pending
14 resolution of the state criminal proceeding against him.

15 Accordingly, **IT IS ORDERED** that Defendant's Motion to Stay Proceedings (Dkt. 17)
16 is **GRANTED**. This case is hereby **STAYED** until the criminal action in Pierce County
17 Superior Court, Cause No. 07-1-05618-3, has been concluded.

18 DATED this 21st day of April, 2010.

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BENJAMIN H. SETTLE
United States District Judge